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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,631	01/23/2004	Andrew Halliday	67629	7718

48940 7590 12/18/2006  
FITCH EVEN TABIN & FLANNERY  
120 S. LASALLE STREET  
SUITE 1600  
CHICAGO, IL 60603-3406

EXAMINER
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ALEXANDER, REGINALD

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/18/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/763,631

Applicant(s)

HALLIDAY ET AL.

Examiner

Reginald L. Alexander

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Klein '740.

There is disclosed in Klein a cartridge 11 containing one or more beverage ingredients 13 and being formed from substantially air and water impermeable materials, the cartridge comprising: an outer member 14 defining a storage chamber, having an open upper end and a closed lower end; a lid 12 sealing the open end; a central conical member or inner member (load bearing member) extending between the upper and lower ends; a discharge spout 31 (figure 7) or aperture (figures 1 and 2) associated with the inner member, forming an outlet for a beverage; and a filter 15 joined to the inner and outer members. (See US Pat# 4,452,130 for more details of filter cartridge)

Claims 1, 2, 10-12, 16 and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Newman '352.

There is disclosed in Newman a brewing cartridge comprising an outer member 200 defining a storage chamber, the outer member being sealed to an inner member 256 having a discharge spout 257 forming an outlet 202 and a lid 203. In regards to the

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inner member being a load bearing member, it is apparent from the drawings showing the placement of the cartridge within a brewing device, that the inner member does withstand compressive forces during extraction. It should also be noted that applicant recitation in the claims that the forces are applied "during formation of a beverage" is not considered structurally limiting to the cartridge itself. In regards to the metes and bounds which define the cartridge it is thought that the prior art discloses all of the claimed structural limitations.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-9 and 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klein '740 in view of Knodt et al.

Knodt discloses the construction of a filter cartridge, having inner and outer members, from two separate components.

It would have been obvious to one skilled in the art to construct the cartridge of Klein from two separate members as disclosed in Knodt, to provide an alternative construction method as opposed to a single piece arrangement.

In regards to the compressive load of which the inner member can withstand, such is an obvious matter of design choice which would be dependent upon the type of use (beverage maker) desired for the cartridge.

It should be noted that it has been held that where the general conditions of a claim are disclosed in the prior art, discovering optimum or workable ranges as well as an optimum value of a result effective variable involves only routine skill in the art.

Claims 3-9, 13-15, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newman '352 in view of Bentley.

Bentley discloses that it is known in the art to use a filter element about an inner member of a cartridge. It would have been obvious to one skilled in the art to provide the device of Newman with the filter taught in Bentley, in order to create a better tasting beverage product by filtering the ingredients, as is known to be old and well known in the art.

It should be noted that it has been held that where the general conditions of a claim are disclosed in the prior art, discovering optimum or workable ranges as well as an optimum value of a result effective variable involves only routine skill in the art.

It should be noted that it has been held that where the general conditions of a claim are disclosed in the prior art, discovering optimum or workable ranges as well as an optimum value of a result effective variable involves only routine skill in the art.

### ***Response to Arguments***

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed with respect to Klein and Knodt have been fully considered but they are not persuasive. Applicant has somehow misinterpreted elements which were recited by the Examiner as representing the claimed subject

matter. The cup of Klein is not considered part of the cartridge. In regards to the non-disclosure of an inner member forming a load bearing member, see 102 rejection above involving Newman.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

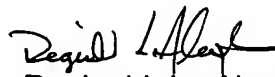
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

rla  
09 December 2006

  
Reginald L. Alexander  
Primary Examiner  
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